

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LUIS ORLANDO BENAVIDES ENRIQUEZ

PETITIONER

V.

CIVIL ACTION NO. 3:23-CV-3067-KHJ-MTP

WARDEN L. PING

RESPONDENT

ORDER

Before the Court is the [9] Report and Recommendation of United States Magistrate Judge Michael T. Parker. The Report recommends denying Petitioner Luis Orlando Benavides Enriquez's [1] Petition for Writ of Habeas Corpus and dismissing this action without prejudice. [9] at 4. The Report notified the parties that failure to timely file written objections would "bar an aggrieved party, except on the grounds of plain error, from attacking on appeal unobjected to proposed factual findings and legal conclusions accepted by the District Court." *Id.* at 5 (citation omitted).

When no party objects to a Magistrate Judge's report, the Court need not review it de novo. *See* 28 U.S.C. § 636(b)(1). Instead, the Court can apply the clearly erroneous, abuse-of-discretion, and contrary-to-law standard of review. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam).

Benavides is serving a 120-month sentence at the Federal Correctional Complex in Yazoo City, Mississippi, for conspiracy to distribute cocaine internationally. [1] at 1, 6; Judgment [8-3] at 1–2. On November 8, 2023, he filed a

Section 2241 habeas petition, arguing that the Bureau of Prisons (BOP) has failed to apply earned First Step Act time credits to his sentence. *See* [1] at 2, 5–6. He admits he has not exhausted his administrative remedies and argues that doing so would be futile. *Id.* at 2, 6; *see also* Figgsmanter Decl. [8-2] at 1.

The Magistrate Judge reviewed the record and concluded that Benavides's failure to exhaust his administrative remedies requires dismissal of his case without prejudice. *See* [9] at 2–4. Specifically, the Magistrate Judge distinguished Benavides's claim that the BOP erred in its application of statutes and regulations from the petitioner's claim in *Gallegos-Hernandez* that the BOP regulation itself was unconstitutional. *See id.* at 3–4 & n.2 (discussing *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (per curiam)). Claims challenging the former must be exhausted unless extraordinary circumstances warrant waiving the exhaustion requirement. *See id.* The Magistrate Judge concluded that Benavides has shown no such extraordinary circumstances. *Id.* at 4.

Benavides did not object to the Report, and the time to do so has passed. The Court finds that the Report is not clearly erroneous or contrary to law. Accordingly, the Court adopts the [9] Report and Recommendation of United States Magistrate Judge Michael T. Parker as the findings of this Court.

Therefore, the Court DENIES Benavides's [1] Petition for Writ of Habeas Corpus and DISMISSES this action without prejudice. A separate final judgment shall issue under Federal Rule of Civil Procedure 58. The Clerk of Court shall mail this Order and the final judgment to Benavides at his address of record.

SO ORDERED, this 30th day of April, 2024.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE